

JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

In re Conservatorship of:

NATE TSEGLIN,

Conservatee.

Case No. SACV 17-00162-DOC-KESx

ORDER REMANDING CASE
TO STATE COURT

The Court sua sponte REMANDS this action to the California Superior Court for the County of Orange for lack of subject matter jurisdiction, as set forth below.

I.

BACKGROUND

Ilya and Riva Tseglin are the parents of Nate Tseglin, an adult with developmental disabilities. (Dkt. 1 at 9.) According to the online records of the Orange County Superior Court¹ of which this Court may take judicial notice, litigation was initiated back in 2007 to appoint a conservator for Nate. After proceedings in 2008 and 2009, Nate's parents were appointed his conservators.

In 2012, the case was transferred from San Diego to the Orange County Superior Court ("OCSC") and assigned case no. A246780.

¹ See <https://ocapps.occourts.org>

1 In 2013, the California Department of Development Services (“Department”)
2 filed a petition to remove Nate’s parents as his conservators. (Dkt. 1 at 8-9.) The
3 matter was tried in July 2015. (Id. at 9.) The OCSC ruled in favor of the
4 Department, removing Nate’s parents as his conservators and appointing the
5 Department’s Director as a limited successor conservator. (Id.) Ilya and Riva
6 Tseglin appealed, but upon exhausting their appeals through the California Supreme
7 Court, the OCSC’s decision removing them as Nate’s conservators became final in
8 August 2015.

9 After that, Nate’s adult brother, Robert Tseglin, filed a number of matters
10 attempting to challenge the OCSC’s decision. (Id. at 9-11.) In July 2016, the
11 OCSC deemed Robert a vexatious litigant. (Id. at 1 1.)

12 Less than two weeks after Robert was deemed a vexatious litigant, Ilya
13 Tseglin began filing ex parte applications and other matters in OCSC case no.
14 A246780. (Id.) As a result, on January 9, 2017, the Department filed a motion to
15 have Ilya deemed a vexatious litigant. (Id. at 5.) The motion is scheduled for a
16 hearing on February 6, 2017. (Id.)

17 II.

18 NOTICE OF REMOVAL

19 On January 30, 2107, Ilya Tseglin (“Removing Party”) filed a notice of
20 removal seeking to remove OCSC case no. A246780 to federal court. (Dkt. 1 at 1-
21 3.) He contends that federal question jurisdiction exists under 28 U.S.C. § 1331
22 because the Department’s motion to have him deemed a vexatious litigant is an
23 attempt to deny him rights guaranteed by the First Amendment of the U.S.
24 Constitution, i.e., his right to petition the government for a redress of grievances.
25 (Id. at 1.)

26 III.

27 DISCUSSION

28 “The right of removal is entirely a creature of statute and ‘a suit commenced

1 in a state court must remain there until cause is shown for its transfer under some
 2 act of Congress.” Syngenta Crop Protection, Inc. v. Henson, 537 U.S. 28, 32
 3 (2002) (quoting Great Northern R. Co. v. Alexander, 246 U.S. 276, 280 (1918)).
 4 Where Congress has acted to create a right of removal, those statutes are strictly
 5 construed against removal jurisdiction. Id.; Nevada v. Bank of Am. Corp., 672
 6 F.3d 661, 667 (9th Cir. 2012); Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir.
 7 1992).

8 Unless otherwise expressly provided by Congress, a defendant may remove
 9 “any civil action brought in a State court of which the district courts of the United
 10 States have original jurisdiction.” 28 U.S.C. § 1441(a); Dennis v. Hart, 724 F.3d
 11 1249, 1252 (9th Cir. 2013). The removing defendant bears the burden of
 12 establishing federal jurisdiction. Abrego v. Dow Chemical Co., 443 F.3d 676, 682
 13 (9th Cir. 2006); Gaus, 980 F.2d at 566-67. “Under the plain terms of § 1441(a), in
 14 order properly to remove [an] action pursuant to that provision, [the removing
 15 defendant] must demonstrate that original subject-matter jurisdiction lies in the
 16 federal courts.” Syngenta Crop Protection, 537 U.S. at 33. Failure to do so requires
 17 that the case be remanded, as “[s]ubject matter jurisdiction may not be waived, and
 18 ... the district court must remand if it lacks jurisdiction.” Kelton Arms Condo.
 19 Owners Ass’n v. Homestead Ins. Co., 346 F.3d 1190, 1192 (9th Cir. 2003). “If at
 20 any time before final judgment it appears that the district court lacks subject matter
 21 jurisdiction, the case shall be remanded.” 28 U.S.C. § 1447(c). It is “elementary
 22 that the subject matter jurisdiction of the district court is not a waivable matter and
 23 may be raised at any time by one of the parties, by motion or in the responsive
 24 pleadings, or sua sponte by the trial or reviewing court.” Emrich v. Touche Ross &
 25 Co., 846 F.2d 1190, 1194 n.2 (9th Cir. 1988).

26 **A. Federal Question Jurisdiction.**

27 The underlying action is a conservatorship action arising under and governed
 28 by the laws of the State of California. Removing Party failed to attach to his Notice

1 of Removal a copy of the case-initiating document for OCSC case no. A246780.²
 2 Instead, he has attached a copy of the Department's vexatious litigant motion which
 3 he contends is the trigger for removal.

4 The Department's vexatious litigant motion does not include any claim
 5 "arising under the Constitution, laws, or treaties of the United States." 28 U.S.C.
 6 § 1331. It is based on California's vexatious litigant statutes at California Code of
 7 Civil Procedure § 391 *et seq.* (Dkt. 1 at 6, 12-14.)

8 Removing Party apparently intends to oppose the Department's motion by
 9 arguing that granting it would violate his First Amendment rights. Regardless of
 10 the merits³ of such an argument, affirmative defenses or counterarguments based on
 11 federal law do not provide a basis to remove an action to federal court. "[T]he
 12 existence of federal jurisdiction depends solely on the plaintiff's claims for relief
 13 and not on anticipated defenses to those claims." ARCO Env'tl. Remediation,
 14 L.L.C. v. Dept. of Health and Env'tl. Quality, 213 F.3d 1108, 1113 (9th Cir. 2000).
 15 An "affirmative defense based on federal law" does not "render[] an action brought
 16 in state court removable." Berg v. Leason, 32 F.3d 422, 426 (9th Cir. 1994). A
 17 "case may not be removed to federal court on the basis of a federal defense ... even
 18 if the defense is anticipated in the plaintiff's complaint, and even if both parties
 19 admit that the defense is the only question truly at issue in the case." Franchise Tax
 20 Bd. v. Construction Laborers Vacation Trust, 463 U.S. 1, 14 (1983).

21 Removing Party has failed to establish a basis for federal question

22 ² The failure to attach the original complaint, as required by 28 U.S.C.
 23 § 1446(a), is a non-jurisdictional procedural defect and cannot, alone, provide the
 24 basis for the district court to remand *sua sponte*. Chiang v. Otis Elevator Co., 92 F.
 25 App'x 428 (9th Cir. 2004) citing Kelton Arms Condominium Owners Association,
Inc. v. Homestead Insurance Co., 346 F.3d 1190, 1192-93 (9th Cir. 2003).

26 ³ Both California courts and the Ninth Circuit has previously ruled that
 27 California's vexatious litigant statutes are constitutional. Wolfe v. George, 486
 28 F.3d 1120, 1125 (9th Cir. 2007).

1 jurisdiction.

2 **B. Diversity Jurisdiction.**

3 Removing Party cites 28 U.S.C. § 1441(b) as a basis for removal. (Dkt. 1 at
4 1.) Section 1441(b) provides for removal “based on diversity of citizenship.”

5 There is also no basis for diversity jurisdiction. Every defendant is not
6 alleged to be diverse from every plaintiff. 28 U.S.C. § 1332(a). To the contrary, it
7 appears that both the Department and Removing Party are citizens of California.
8 Removing Party has not attached any pleadings setting forth the amount in
9 controversy or made any allegation, let alone shown by a preponderance of the
10 evidence, that the \$75,000 amount in controversy requirement has been met. Id.;
11 Abrego, 443 F.3d at 683.

12 **C. Jurisdiction under 28 U.S.C. § 1343.**

13 Removing Party cites 28 U.S.C. § 1343 as a basis for this Court’s original
14 jurisdiction and, therefore, removal. (Dkt. 1 at 1.) Section 1343(a) provides in full
15 as follows:

16 (a) The district courts shall have original jurisdiction of any civil
17 action authorized by law to be commenced by any person:

18 (1) To recover damages for injury to his person or property, or
19 because of the deprivation of any right or privilege of a citizen of the
20 United States, by any act done in furtherance of any conspiracy
21 mentioned in section 1985 of Title 42;

22 (2) To recover damages from any person who fails to prevent or to
23 aid in preventing any wrongs mentioned in section 1985 of Title 42
24 which he had knowledge were about to occur and power to prevent;

25 (3) To redress the deprivation, under color of any State law, statute,
26 ordinance, regulation, custom or usage, of any right, privilege or
27 immunity secured by the Constitution of the United States or by any
28 Act of Congress providing for equal rights of citizens or of all persons

1 within the jurisdiction of the United States;

2 (4) To recover damages or to secure equitable or other relief under
3 any Act of Congress providing for the protection of civil rights,
4 including the right to vote.

5 28 U.S.C. § 1343(a).

6 None of these provisions apply to OCSC case no. A246780. It was not
7 commenced under 42 U.S.C. § 1985. It was not commenced to redress the
8 deprivation of a federal right. It was not commenced to obtain relief under any
9 federal civil rights laws. Rather, this state conservatorship case was commenced to
10 determine who, if anyone, should serve as a conservator for Nate Tseglin.

11 **D. Jurisdiction under 28 U.S.C. § 1443.**

12 Section 1443(1) permits a defendant in state cases to remove the proceedings
13 to the federal district courts when a defendant is “denied or cannot enforce in the
14 courts of such State a right under any law providing for the equal civil rights of
15 citizens in the United States.” In order to successfully remove, the defendant must
16 satisfy a two-prong test: (1) the rights allegedly denied must arise under a federal
17 law providing for specific civil rights stated in terms of racial equality; and (2) the
18 defendant must be denied or unable to enforce the rights in state courts. Johnson v.
19 Mississippi, 421 U.S. 213, 219 (1975); City of Greenwood, Miss. v. Peacock, 384
20 U.S. 808, 827-28 (1966); Georgia v. Rachel, 384 U.S. 780, 792 (1966). Under the
21 first prong, constitutional or statutory provisions of general applicability or statutes
22 not protecting against racial discrimination will not suffice. Johnson, 421 U.S. at
23 219. Under the second prong, a defendant’s federal rights are left to the state courts
24 except in rare situations where it can be clearly predicted that those rights will
25 inevitably be denied by the very act of bringing the defendant to trial in state court.
26 Peacock, 384 U.S. at 828.

27 Removing Party alleges that he has been the subject of “frivolous” and
28 “false” accusations by Department personnel (Dkt. 1 at 2) and a previous filing by

1 Robert Tseglin referred to “hate speech and defamation” against Petitioner (id. at
 2 10). He alleges an “inability to prevail” in state court against the Department. (Id.
 3 at 2.) He does not, however, allege that any adverse action has been taken against
 4 him in state court due to his race.

5 These vague assertions of unfairness in state court are insufficient to invoke
 6 this Court’s jurisdiction and section 1443. Removing Party “must assert that the
 7 state courts will not enforce [a specified federal] right, and that allegation must be
 8 supported by reference to a state statute or a constitutional provision that purports to
 9 command the state courts to ignore the federal rights.” People of State of California
 10 v. Sandoval, 434 F.2d 635, 636 (9th Cir. 1970). Removing Party has failed to
 11 identify any specific state statute or constitutional provision that commands the
 12 state courts to ignore his federal rights. See HSBC Bank USA v. Kubik, No. 13-
 13 1692, 2013 WL 1694670, at *3 (C.D. Cal. Apr. 16, 2013) (“Defendant Kubik does
 14 not, and cannot, identify any California state law or constitutional provision that
 15 commands state courts to ignore an amendment to the U.S. Constitution.”). As
 16 noted above, California’s vexatious litigant statutes do not facially violate any
 17 federal rights. Consequently, removal is not proper under section 1443(1).

18 IV.

19 CONCLUSION

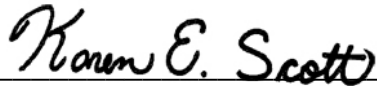
20 This Court does not have subject matter jurisdiction over this case. IT IS
 21 THEREFORE ORDERED that this matter be REMANDED to the Superior Court
 22 of the State of California for the County of Orange.

23
 24 DATED: February 6, 2017

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26 DAVID O. CARTER
 27 United States District Judge
 28

1 Presented by:

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3 KAREN E. SCOTT

4 United States Magistrate Judge

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